

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-4015

UNITED STATES COURT OF APPEALS

For the Second Circuit

B
P/S

MARILYN INA WILLIAMS,

Petitioner

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

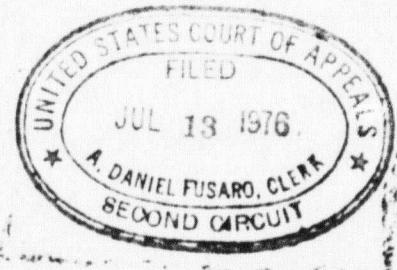
Respondent

PETITION FOR REVIEW

BOARD OF IMMIGRATION APPEALS

JOINT APPENDIX

Edelman & Aronowitz
Attorneys for Petitioner
225 Broadway
New York, New York 10007



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United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A19 486 461 - New York

DEC 30 1975

In re: MARILYN INA WILLIAMS

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Charles Aronowitz, Esquire
Edelman & Aronowitz
225 Broadway
New York, New York 10007

ON BEHALF OF I&N SERVICE: Martin J. Travers
Trial Attorney

CHARGE:

Order: Sec. 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - Nonimmigrant - remained
longer than permitted

APPLICATION: Motion to reopen to apply for suspension
of deportation under section 244(a)(1) of
the Immigration and Nationality Act

The respondent has moved to reopen deportation proceedings to apply for suspension of deportation under section 244(a)(1) of the Immigration and Nationality Act. The Service opposes this motion. Although the respondent has at last achieved the minimum period of physical presence required for suspension under section 244(a)(1), this factor, by itself, is insufficient to warrant reopening. Matter of Sipus, Interim Decision 2172 (BIA 1972); Matter of Lam, Interim Decision 2136 (BIA 1972). The respondent has failed to make a prima facie showing of the "extreme hardship" required under section 244(a)(1). Consequently, the motion to reopen will be denied.

(Appendix p.1)

A19 486 461

ORDER: The motion is denied.

Chairman

- 2 -

(Appendix p.2)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

- - - - -
In the Matter of :
Marilyn Ina Williams : File No. A19 486 461
Respondent :
- - - - -

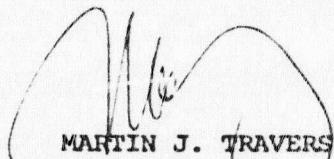
IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: Edelman & Aronowitz, Esquires
225 Broadway
New York, New York

OPPOSITION TO MOTION

The Service is opposed to the Motion to Reopen for suspension of deportation. The respondent has the bare minimum of time needed. This time has been gained by the use of dilatory tactics which is conceded in the affidavit of Charles Aronowitz, dated April 18, 1975 and filed in an action in the United States District Court.

The Motion should be dismissed as are not exhibiting extreme hardship nor one which is meritorious.



MARTIN J. TRAVERS
Trial Attorney
New York District

(Appendix p.3)

November 17, 1975.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In Re:

File No.:

MARILYN INA WILLIAMS,

A19 486 461

(NYC)

movant

MOTION TO REOPEN DEPORTATION PROCEEDINGS

On behalf of Marilyn Ina Williams, it is respectfully moved that deportation proceedings be reopened for the purpose of permitting the movant to submit an application for suspension of deportation pursuant to Section 244(a)(1) of the Immigration and Nationality Act, as amended.

The movant is a native of British Honduras, age 26, who has been physically present in the United States since October, 1968. She married a lawful permanent resident of the United States on February 28, 1970. They were divorced on October 30, 1974. They have a United States citizen child, Sheldon Dean Williams, born March 31, 1970 in the United States. Marilyn Ina Williams was awarded custody of the child and they now reside together in Amityville, New York.

(Appendix p.4)

Marilyn Ina Williams is a person of good moral character. A good conduct certificate, dated August 5, 1975, from the Police Department, County of Suffolk (New York State) is attached.

The movant has conceded deportability but wishes to apply for suspension of deportation on the grounds that said deportation would be an extreme hardship to her United States citizen child and to herself.

Marilyn Ina Williams is gainfully employed and supporting her child. Should she be deported, her child would have to accompany her to British Honduras thereby losing the advantage of an American education and upbringing. Moreover, the movant could not within, probably, a period of many years reasonably expect to obtain an immigrant visa to the United States because of the unavailability of a nonpreference visa number for her and her inability to obtain a certification from the Department of Labor as required by Section 212(a)(14) of the Act.

The child's departure, moreover, would remove him from contact with his father and would lessen the likelihood that any support would be rendered by his father.

In addition to now having the minimum required period of physical presence, evidence is submitted herewith establishing her good moral character, custody award regarding her United States citizen child, and payment of income taxes. The movant does not have a record containing adverse factors. Her situation merits reopening for further development of the issues.

In April 1975, Mrs. Williams moved to reopen proceedings to ask for reinstatement of voluntary departure. The Immigration Judge denied the request and refused to grant a stay of deportation pending appeal. The movant thereupon commenced a declaratory judgment action in the United States District Court for the Southern District of New York, complaining that the District Director's prior denial of her application for a stay of deportation was improper. Her deportation was stayed by stipulation with the United States Attorney. Now that the movant meets the physical presence requirement for suspension of deportation, the Federal Court proceeding is moot.

Dated: October 6, 1975
New York, New York

Charles Aronowitz
Edelman & Aronowitz
225 Broadway
New York, N.Y. 10007

(Appendix p.6)

File No. A

FEES STAMP

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN
FORM)

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my child

who is/are citizen(s) lawful permanent resident(s) of the United States, and I have been physically present in the United States without any absence since October 20, 1968

(2a) My present true name is: Marilyn Ina WILLIAMS	(2b) My true name at birth is: Marilyn Ina Garbutt			
(3) I have been known by the additional names none	Male <input checked="" type="checkbox"/> Female <input type="checkbox"/> (Color of eyes) Brown (Color of hair) DR. BROWN (Complexion) DARK			
(4) I was born at (Place and country) Belize, British Honduras	on (Month) (Day) (Year) July 6, 1949	My nationality (Country of which citizen or subject) British		
(5) I now reside at (Address number and or name of street) 290 Broadway, Amityville, New York 11701	Number and street 290 Broadway, Amityville, New York 11701	(City or town) Amityville	(State) New York	(ZIP Code) 11701

(6) I first entered the United States under the name of Marilyn Ina Garbutt	First (Last)	on (Month) (Day) (Year) Sept. 29, 1968	At (seaport, airport, or land border port) Miami, Florida
Name of vessel or other means of conveyance TACA Airlines	I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other) C-1 transit		
For a period of time to expire (Insert date of period for which admitted) Sept. 29, 1968	My last extension of stay in the United States expired on (date) -----		
If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible I was inspected			

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates. (If you have never departed from the United States since your original date of entry, insert "no departures")

DEPARTED			RETURNED		INSPECTED AND ADMITTED (Answer Yes or No)
	PORT	DATE (Month Day Year)	PORT	DATE (Month Day Year)	
Miami, Florida		9-29-68	Buffalo, New York	10-6-68	yes
Buffalo, New York		10-13-68	Buffalo, New York	10-20-68	yes

(7) During the last 10 years, I have been in the United States as listed below. (If less than 10 years, set forth the information for the period you have been in the United States.) List present address FIRST, and work back.

STREET AND NUMBER-CITY OR TOWN-STATE (Include number of hotel room, furnished room or apartment in present address)	FROM-		TO-	
	Month	Year	Month	Year
290 Broadway, Amityville, New York	March	1975	present	
135 Columbus Blvd., Amityville, N.Y.	Oct.	1968	March	1975

(Use a separate sheet for additional entries)

(Appendix p. 7)

(8) During my residence at the places in the United States named above I was employed by the following-named persons or firms. (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified.)

FULL NAME OF EMPLOYER	ADDRESS OF EMPLOYER	EARNINGS PER WEEK (Approximately)	TYPE OF WORK PERFORMED	FROM—		TO—	
				Month	Year	Month	Year
L & S Fashions	275 Broadway Amityville, N.Y.	\$1.65	seamstress	Nov.	1971	probate	

(Use a separate sheet for additional entries.)

(9) If self-employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom _____

(10) I <input type="checkbox"/> AM MARRIED <input checked="" type="checkbox"/> AM NOT X	If married, the name of my spouse is _____	We were married on (Month) (Day) (Year)	at (City or town) _____	(State or country) _____
She or he was born at (City or town) _____ (State or country) _____		on (Month) (Day) (Year)	and is a citizen of (Country) _____	
(11) (If your spouse is other than a native born United States citizen, answer the following.) She or he arrived in the United States at (City or town) _____		on (Month) (Day) (Year)	<input type="checkbox"/> was <input type="checkbox"/> was not	admitted for permanent residence.
was naturalized on (Month) (Day) (Year) (Place naturalized) _____				

(12) I have have not been previously married. (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage) _____
Married to Kenneth Williams, a U.S. citizen, on 2-28-70, Amityville, N.Y., divorced 10-30-74, Hauppauge, N.Y.

(13) My present spouse has has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage) _____

(14) My spouse is is not employed. If employed, give salary and name and address of place of employment _____

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse) _____

Cash, Stocks and Bonds \$ 100.00
Real Estate \$ 4000.00
Other (Describe) \$ 4000.00

Cash, Stocks and Bonds \$ _____
Real Estate \$ _____
Other (Describe) \$ _____
Total \$ _____

(16) I have one child. Give information requested in column _____

NAME	AGE	PLACE OF BIRTH	NOW RESIDING AT-	CITIZEN OF	LAWFUL PERMANENT RESIDENT OF U.S.
Sheldon Williams	5	Amityville, N.Y.	with me	USA	

The names, assets, and earnings of my children in the United States who have separate incomes are _____

not applicable
(Appendix P.8)

(17) I have have not after entry into the United States acquired the status of an exchange alien.

(18) I have have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 23, 1950, and the Immigration and Nationality Act.

(19) I have have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received.

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) _____

Date and place of entry on duty _____ Date of discharge _____
(Month, year, place, service number, etc.)

Type of discharge (honorable, dishonorable, etc.) _____ Date of discharge _____ I served in active-duty status from _____

I served in active duty status from _____ to _____.

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes No

If "Yes," give date, Selective Service number, local draft board number and your last draft classification. _____

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes No

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes No

(23) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes No

List membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or a foreign country.

country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization.

Local 129, UGM, Massapequa, New York, since 1971

(25) I have have never (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following.

(Use a separate sheet for additional entries.)

(26) I can return to my country of Birth Nationality Last Residence without fear of persecution. If unable to return to any
(Check the appropriate block or blocks)

of these countries, give reasons _____

(27) would would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain I am not able to obtain a labor certification and nonpreference visas are unavailable

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States, otherwise show only country

(Appendix p.9)

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country _____

(30) My father is is not employed. If employed, give salary and place of employment _____

(31) My mother is is not employed. If employed, give salary and place of employment _____

(32) The assets of my parents (not including clothing and household necessities) are

Assets of father consist of the following

Cash, Stocks and Bonds	\$
Real Estate	\$
Other (Describe)	\$
Total	\$

Assets of mother consist of the following

Cash, Stocks and Bonds	\$
Real Estate	\$
Other (Describe)	\$
Total	\$

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 2 for documents which must be attached.)

Nature of Document

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered () to (), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name. So Help Me God

(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above-named applicant at _____
this _____ day of _____, 19 _____

(Appendix p.10)

Immigration Judge



EUGENE R. KELLEY
POLICE COMMISSIONER

POLICE DEPARTMENT, COUNTY OF SUFFOLK

HAUPPAUGE, N. Y. 11787
(516) 265-5000

August 5, 1975

TO WHOM IT MAY CONCERN:

*This is to certify that our files have been searched and
the below named person does not appear on any criminal record.*

Marilyn I. WILLIAMS nee: GARBUTT Date of birth: 7/6/49

Residence for past four (4) months: 290 Broadway, Amityville, New York
Residence for prior 6 years: 135 Columbus Blvd., Amityville, New York

By Direction of the Police Commissioner.

Eugene R. Kelley
Commanding Officer
Central Records Bureau

SFF/csg

(Appendix p.11)



United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A19 486 461 - New York

JUL 6 1975

In re: MARILYN INA WILLIAMS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charles Aronowitz, Esquire
225 Broadway
New York, New York 10007

ON BEHALF OF I&N SERVICE: William B. Gurock
Trial Attorney

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C.
1251(a)(2)) - Nonimmigrant
visitor for pleasure - re-
mained longer than permitted

APPLICATION: Extension of voluntary departure

This is an appeal from an order of an immigration judge denying the respondent's motion to reopen the deportation proceedings in order to permit an application for restoration of voluntary departure and a stay of deportation. The appeal will be dismissed.

The record relates to a native of British Honduras and a citizen of the United Kingdom and Colonies, who entered the United States in October, 1968 as a visitor authorized to remain in the United States until April, 1969. She remained beyond that time without authority. On August 16, 1974, she was granted four months in which to depart voluntarily because she had a United States citizen child. The order provided that if voluntary departure was not effected she would be deported to British Honduras. A warrant of deportation was entered on January 13, 1975.

(Appendix p.12)

BEST COPY AVAILABLE

We have reviewed the record and conclude that the immigration judge had no power to grant an extension of voluntary departure. That authority rests solely with the District Director, 8 C.F.R. 244.2. What the respondent actually seeks is a new grant of voluntary departure. However, as we indicated in Matter of Onyedibia, Interim Decision 2307 (BIA 1974), a new grant of voluntary departure would not normally be warranted unless the alien could demonstrate compelling reasons or circumstances for her failure to depart within the time originally granted. This respondent has not satisfactorily explained her failure to depart voluntarily as previously authorized. Moreover, the respondent does not have a "right" to remain in the United States because her deportation would constructively deport her United States citizen child, Matter of Anaya, Interim Decision 2243 (BIA 1973), aff'd Anaya v. INS, 500 F.2d 574 (5 Cir. 1974).

We have stated that: "Where reopening for suspension of deportation purposes is sought, a mere showing that the alien has at last achieved the minimum statutory period of continuous physical presence does not ordinarily, without more, establish the other statutory prerequisites sufficiently to warrant reopening for a plenary hearing," Matter of Sipus, Interim Decision 2172 (BIA 1972). The respondent here admits that she lacks the residence requirement of section 244(a)(1) of the Immigration and Nationality Act. We agree with the immigration judge that in the circumstances the privilege of voluntary departure should not be granted to permit her to qualify for suspension of deportation. In addition, we find nothing else in the record to warrant reopening for a section 244(a)(1) application. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

Chairman

May 20, 1975

Board of Immigration Appeals
United States Department of Justice
Washington, D.C.

Re: Marilyn Ina Williams
A19 486 461 (NYC)

Gentlemen:

This matter is presently before the Board. I am constrained to respond to Mr. Gurock's "Reply Brief" dated May 16, 1975.

The record, indeed, speaks for itself. It shows timely request after timely request. It reflects that on April 18, 1975, the Immigration Judge orally advised that the motion to reopen proceedings was being denied. He further indicated that he would enter a written memorandum amplifying the reasons "as soon as time will permit". April 18th was a Friday. The following Tuesday the appeal was filed - even before receipt of the written decision.

According to the I-295 accompanying the written decision, I was required to file the appeal by May 6, 1975. When I did file the appeal on April 22, 1975, I requested one month to prepare a brief. On the same day the Service granted me "additional time" until April 30, 1975, to submit my brief. In other words, my brief had to be completed six days before the deadline which was set to submit my appeal. Consistent with my usual practice, my brief was submitted on time.

So much for dilatory tactics. I consider that an apology from Mr. Gurock is in order.

Sincerely yours,

Charles Aronovitz

cc: Mr. Gurock, NYC

(Appendix p.14)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

BEFORE THE BOARD OF IMMIGRATION APPEALS

- - - - -
In the Matter of :
:
Marilyn Ina Williams : File No. A19 486 461
:
Respondent :
:
- - - - -

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: Charles Aronowitz, Esquire
225 Broadway
New York, New York

REPLY BRIEF

The record in this case speaks for itself.

Consistent with the dilatory tactics engaged in by counsel is his notice of appeal to the Board filed on April 22, 1975. In that request he asks for a month within which to submit a brief. The brief when filed is merely a reiteration of the arguments made by him at the oral argument before the Immigration Judge.

The order of the Immigration Judge should be sustained and the appeal dismissed.

WILLIAM B. GUROCK
Supervisory Trial Attorney
New York District

(Appendix p.15)

May 16, 1975.

File No.: A19 486 461 - New York

-----X

In the Matter of:

BRIEF ON

MARILYN INA WILLIAMS,

APPEAL

Respondent

-----X

IN DEPORTATION PROCEEDINGS

ON BEHALF OF RESPONDENT:

Charles Aronowitz, Esq.
Edelman & Aronowitz
225 Broadway
New York, N.Y. 10007

TO THE BOARD OF IMMIGRATION APPEALS

This record relates to a person of good moral character who has been in the United States for the past six and one-half years. She has a five-year-old United States citizen child. Because of her chargeability to a sub-quota country (Belize) it is not likely she would be eligible for an immigrant visa until her child is old enough to petition for her as an "immediate relative", some sixteen years.

The District Director at New York City, despite the equities of this matter and the possibility of relief within a few months under Section 244(a)(1) of the Immigration and Nationality Act, chooses to enforce her departure.

An action is pending in the United States District Court for the Southern District of New York (75 CIV 1842).

*Over 1 year
need 2nd
Court
No
from 4/30/77*
This action was commenced only after it became obvious that

the District Director was intent upon deportation. The plaintiffs seek to have the District Director's denial of a stay of deportation declared to be erroneous. A copy of the complaint is attached hereto, setting forth the operative facts of the case.

At a time when it is contemplated to permit one hundred thousand Vietnamese refugees to be paroled into the United States for humanitarian reasons, it seems odd for the District Director to act in a most inhumane manner against a person who certainly has a legitimate reason for wanting to stay here and has never done anything to harm the interests of the United States. In addition, the District Director is seeking, as a practical consequence of his actions, to tarnish the childhood of a citizen of the United States.

The District Director may have broad discretionary powers to initiate or withhold deportation prosecutions, however, he does not have the power to act in a completely arbitrary manner. If he persists, he will be asked to explain in federal court proceedings just why he is attempting to deport the plaintiff at the same time he permits so many others with lesser equities and with less meritorious situations to remain. If persons convicted of narcotics violations, for example, are permitted to remain, why not Marilyn Ina Williams, who has no criminal record. The Service is supposed to follow a policy of "Uniformity of Decisions" -

but that policy has not been followed in this matter.

The Immigration Judge, in denying the motion to reopen deportation proceedings, has followed the District Director. The pending federal court action presents serious questions regarding the possibility of a capricious enforcement of our immigration laws. The Immigration Judge should have either granted the motion to reopen proceedings or deferred his decision in favor of the pending court action. Not only did the Immigration Judge deny the motion, but he even refused to grant a stay of deportation pending appeal of his action to the Board. I submit that the denial of a stay pending appeal was totally unwarranted by the facts and not a humane decision.

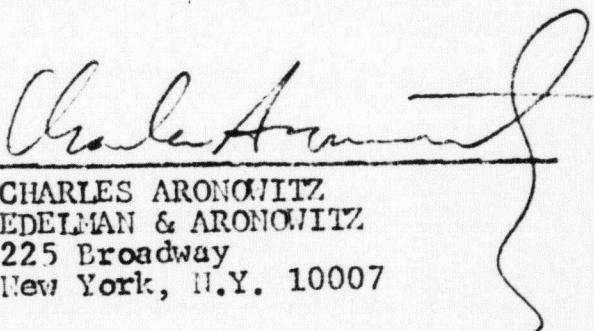
Immediately following the Immigration Judge's denials on April 18, 1975, an application for an order to show cause was signed by a District Court Judge ordering a stay of deportation until April 28, 1975, on which date a hearing on the order to show cause was to take place. On April 21, 1975, on consent of the Assistant United States Attorney, a stipulation was entered into whereby Marilyn Ina Williams was granted a stay of deportation pending the Board's consideration of the instant appeal and withdrawing the application for an order to show cause.

Marilyn Ina Williams should be permitted to stay in

the United States for the few months remaining until she becomes eligible to apply for suspension of deportation.

Dated: New York, New York

April 30, 1975


Charles Aronowitz
CHARLES ARONOWITZ
EDELMAN & ARONOWITZ
225 Broadway
New York, N.Y. 10007

(Appendix p.19)

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPPLICATE TO:
IMMIGRATION AND NATURALIZATION SERVICE

Fee Stamp

In the Matter of:

Marilyn Ina Williams

File No. A19 486 461

decision rendered
orally April 18, 1975

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated _____, in the above entitled case.
2. Briefly, state reasons for this appeal. Appellant, a native of British Honduras, has been in the U.S. for six and one-half years. She has a 5-yr-old U.S.citizen child. Since she is chargeable to quota for Belize (unavailable) she would have to wait until the child is 21 in order to receive immigrant visa. In effect also causing forced departure of U.S. citizen child. No criminal record. Motion was made to reopen proceedings in order to request restoration of voluntary departure and stay of deportation. Idea being to shortly apply for suspension of deportation. Despite great equity and enormous hardship of deportation, stays were refused both administratively and by Immigration Judge. Motion to reopen proceedings was also denied. Said denial was an abuse of discretion in that the consequences are so harsh as to bear no rational relationship to the facts of the case. The District Director was wrong in prosecuting this matter and the Immigration Judge was wrong to take such punitive action.

3. I _____ desire oral argument before the Board of Immigration Appeals in
(do) _____ (do not) _____

Washington, D. C.

4. I am (am) (am not) filing a separate written brief or statement. I request one month to submit the brief, following my receipt of a transcript of the hearing. At that time I will decide whether or not to request oral argument.

Signature of Appellant (or attorney or representative)

(Print or type name)
Charles Aronowitz

225 Broadway, New York, N.Y. 10007
Address (Number, Street, City, State, Zip Code)

April 22, 1975

Days

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

(Appendix p.20)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SHELDON DAVE WILLIAMS, an
infant, and MARILYN INA WILLIAMS,
his mother,

Plaintiffs

STIPULATION

vs.

75 CIV 1842 (CHM)

Maurice F. MILNY, District
Director of the United States
Immigration and Naturalization
Service at New York, New York,

Defendant

IT IS HEREBY STIPULATED AND AGREED by and
between the attorneys for the respective parties, that the
deportation of plaintiff MARILYN INA WILLIAMS will be stayed
pending a final determination by the Board of Immigration
Appeals in the matter of her motion to reopen deportation
proceedings and that the order to show cause returnable at
10:00 a.m., in Courtroom 1106, United States Courthouse,
Foley Square, New York, on Monday, April 28, 1975, is hereby
withdrawn.

Dated: New York, New York

April 1975

Attorney for Plaintiff

PAUL J. CURRAN
United States Attorney
for the Southern District
of New York

By:

SO ORDERED:

MARY MAGUIRE
Special Assistant United
States Attorney

(Appendix p.21)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SHELDON DEAN WILLIAMS, an
infant, and MARILYN INA WILLIAMS,
his mother,

Plaintiffs

75 CIV 1842

Cury

-vs.-

ORDER TO SHOW CAUSE

MAURICE F. KILEY, District
Director of the United States
Immigration and Naturalization
Service at New York, New York,

with a

STAY OF DEPORTATION

Defendant

-----X

UPON the annexed affidavit of CHARLES ARONOWITZ,
attorney for the above-named plaintiffs, duly sworn to on the
18th day of April 1975, and upon the complaint herein, and upon
all the pleadings and proceedings heretofore had herein, IT IS
HEREBY ORDERED

THAT defendant MAURICE F. KILEY, or his attorneys,
SHOW CAUSE before me on the ~~28~~ day of *April*, 1975, in
Room *1106*, of the United States Courthouse, Foley Square,
in the Borough of Manhattan, City, County and State of New York,
~~at 10 AM~~ in the *forenoon* of that day, or as soon thereafter as
counsel can be heard, why, pending the determination by the Court
of the issues in the above-entitled action, the defendant, his
agents, servants and employees should not be stayed from
executing the deportation of the plaintiff MARILYN INA WILLIAMS,
or from taking or instituting any proceedings of any nature
against the plaintiff MARILYN INA WILLIAMS, and why, pending the
determination of the Court of said issues, the said plaintiff,
MARILYN INA WILLIAMS should not be permitted to remain at
(Appendix p.22)

liberty. IT IS FURTHER ORDERED

THAT SUFFICIENT CAUSE therefor to me appearing, let personal service of a copy of this ORDER, together with a copy of the annexed affidavit, on PAUL J. CURRAN, Esq., United States Attorney for the Southern District of New York, and on the defendant, MAURICE F. KILEY, on or before the 21 day of April, 1975, at 12 noon be deemed good and sufficient service.

IT IS FURTHER ORDERED that the deportation of plaintiff MARILYN INA WILLIAMS, be stayed pending the determination of this application.

Dated: New York, New York

April 18 . 1975

Issued at 445 PM
on consent of the
Government
only

s/ Charles M. Metzger

UNITED STATES DISTRICT JUDGE

(Appendix p.23)

X

SHELDON DEAN WILLIAMS, an infant,
and MARILYN INA WILLIAMS, his
mother,

Plaintiffs

75 CIV 1842

-vs.-

AFFIDAVIT

MAURICE F. KILEY, District
Director of the United States
Immigration and Naturalization
Service at New York, New York,

Defendant

X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES ARONOWITZ, being duly sworn, deposes and
says:

I am an attorney duly admitted to practice before
this honorable Court and am fully familiar with the facts and
circumstances set forth herein, which I set forth on information
and belief.

Plaintiff MARILYN INA WILLIAMS is a native of
British Honduras who has been in the United States for six and
one-half years. She was married to a lawful permanent resident
but was divorced from him in October 1974. She has a five-year-
old United States citizen child. She has custody of the child
pursuant to the divorce decree and the child resides with her.
She is a law-abiding person, of good moral character and with no
criminal record.

Because of the structure of our immigration laws, it
is likely that she would have to wait outside of the United States
for 16 years before becoming eligible for immigration. For all
practical purposes, her United States citizen child would also
(Appendix p.24)

he forced to remain away from the country of his birth for that length of time.

As is fully set forth in the attached copy of the complaint on file in this matter, within a few months there will arise the possibility of substantial relief for plaintiff MARILYN INA WILLIAMS under Section 244(a)(1) of the Immigration and Nationality Act.

Despite this potential relief and her basically sound record, the defendant chooses to deport her from the United States.

On April 11, 1975, following receipt of the notice to surrender for deportation on April 21, 1975, a motion was made to reopen deportation proceedings which included a request for a stay of deportation. It was denied the very same day by the defendant.

By April 16, 1975, no action having been taken by an Immigration Judge on the motion referred to above, and in view of the fact that the submission of such a motion does not serve to effect a stay of deportation, the above-captioned declaratory judgment action was instituted.

On April 18, 1975, at 2:00 p.m., the motion was denied. The reasons for the denial were to be amplified later in writing by the Immigration Judge. There exists the possibility of an appeal to the Board of Immigration Appeals in Washington, D.C., but the Immigration Judge declined to stay deportation pending consideration of such an appeal.

On April 18, 1975, at 2:45 p.m., the facts in the matter were telephonically communicated to the Board of Immigrati-

tion Appeals along with a request for a stay of deportation. As of this time I have not yet received their answer and I cannot say with certainty when I would receive their answer.

This application is made by Order to Show Cause instead of Notice of Motion because of the very short period remaining to plaintiff MARILYN INA WILLIAMS before the threatened deportation.

There is no administrative appeal procedure available to the plaintiff to stave off deportation.

No previous application for the same or similar relief has heretofore been made to any court or judge thereof.

WHEREFORE, your deponent respectfully requests that an ORDER TO SHOW CAUSE be issued by this Court, directing that the defendant, MAURICE F. KILEY, or his attorneys, SHOW CAUSE before a Judge of this Court, why, pending the determination by the Court of the issues in the above-captioned matter, the said defendant, his agents, servants and employees should not be stayed from executing the deportation of MARILYN INA WILLIAMS, or taking said MARILYN INA WILLIAMS into custody, or taking or instituting any proceedings of any nature against MARILYN INA WILLIAMS.

Subscribed and sworn to before
me this 18th day of April 1975.

CHARLES ARONOWITZ

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No.: A 19 486 461 - New York

In Behalf of Service:

In the Matter of: : William B. Gurock, Esq.,
Marilyn Inn Williams : Trial Attorney
- Respondent - : New York, N. Y., 10007

In Behalf of Respondent:
Charls Aronowitz, Esq.,
225 Broadway
New York, N. Y., 10007

IN DEPORTATION PROCEEDINGS

ORDER OF IMMIGRATION JUDGE

The respondent is a native of British Honduras and a citizen of the United Kingdom and Colonies who entered the United States as a visitor. At a hearing held on August 15, 1974, by stipulation between the Trial Attorney and Counsel, it was conceded that the entry occurred in October, 1968 and the respondent was authorized to remain in the United States until April, 1969, since which date she remained without authority. It was further stipulated that respondent be granted a period of four months to effect her voluntary departure inasmuch as she had a young United States citizen child. Upon such stipulation, and respondent's representation that she would depart when required, an order was entered granting her the privilege of voluntary departure to be effected by December 18, 1974, subject to any extension that might be granted by the District Director and with an alternate provision for her deportation to British Honduras upon her failure to depart when required. At that time respondent was informed that there was no assurance that she would be granted such an extension. Appeal from that decision was waived by counsel and it accordingly became final.

On December 13, 1974, respondent's counsel requested an extension of voluntary departure time of the District Director for a period of one year. That request was denied but she was given until January 10, 1975 to depart voluntarily. Upon her failure to so depart, a warrant of deportation was entered on January 13, 1975. Nothing further was done by the respondent, and on April 8, 1975, a notice was mailed to her, with a copy to her attorney, to report to the Immigration Office for deportation on April 21, 1975.

Subsequently, on April 11, 1975 her counsel presented the instant motion to reopen these deportation proceedings and for a stay of deportation, and to restore voluntary departure for a period of six months, thereby completing seven years of continuous physical presence in this country, and thus to

(Appendix p.27)

satisfy the minimum time requirement for possible eligibility for suspension of deportation. The motion alleges that since respondent is the mother of a five-year old United States citizen and cannot obtain an immigrant visa because no visa number will be available to her for an extended period of time that her unforced departure at this time from the United States would be punitive. The District Director denied the request for a stay on April 11, 1975 but notified counsel that voluntary departure would be restored on condition that respondent leave the United States at her own expense no later than April 21, 1975. The motion was referred to the undersigned for further consideration and was opposed by the Trial Attorney on oral argument.

The respondent was originally granted a period of four months to effect departure because of her citizen child and upon her representation that she would depart when required. She has been given further opportunities to leave voluntarily by the District Director but has not seen fit to avail herself of such offers. Although informed on December 13, 1974 that she could leave by January 10, 1975, she failed to do so and ignored the outstanding order in her case until she was notified to surrender for deportation. If she intended in good faith to leave voluntarily when she originally applied for and was granted that privilege, she has had more than ample opportunity to do so. There is no evidence of any substantial change in her situation since she was originally accorded the privilege of voluntary departure. The grant of such privilege was not intended to afford her a means of accumulating additional residence in the United States to qualify for suspension of deportation. Consequently, the instant motion is found to be entirely without merit and will be denied in all respects. 8 CFR 242.22

ORDER: IT IS ORDERED that the motion to reopen the proceedings, and for a stay of deportation be denied in all respects.

HENRY I. MILLMAN
Immigration Judge

New York, N. Y.
April 18, 1975
File A 19 486 481

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF
MARILYN INA WILLIAMS

FILE A-19 486 461

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Henry I. Millman

Before: _____, Immigration judge

Date: April 18, 1975

Place: 20 West Broadway, N.Y., N.Y. (7)

ORAL ARGUMENT ON RESPONDENT'S MOTION TO REOPEN PROCEEDINGS AND FOR
A STAY OF DEPORTATION

Transcribed by Patrick J. Killela Recorded by Dictabelt

No one

Official Interpreter: _____

Language English

APPEARANCES:

For the Service:

William B. Gurock, Esq.

Trial Attorney

Station

For the Respondent:

Charles Aronowitz, Esq.

225 Broadway

New York, N.Y.

(Appendix p.29)

1 IMMIGRATION JUDGE: Gentlemen, I have before me a motion to reopen these
2 proceedings, and I understand Mr. Gurock that you waive the submission of
3 a written memorandum by counsel and you are prepared for oral argument.

4 MR. GUROCK: Correct.

5 IMMIGRATION JUDGE: Counsel, I will listen to your presentation, if there is
6 anything to add to the written statement that has been submitted.

7 MR. ARONOWITZ: I would just like to reaffirm that Marilyn Ina Williams,
8 is involved with considerable equities in that, she has a citizen child
9 who is five years old. She entered the United States approximately six and
10 one half years ago. Subsequently was married to a lawful permanent resident
11 who initiated petitions in order that she might become a permanent resident
12 herself. She had the child and subsequently differences arose between them,
13 they were divorced.

14 IMMIGRATION JUDGE: Let me break in at this point? When was the divorce?

15 MR. GUROCK: October 30, 74.

16 IMMIGRATION JUDGE: All right go on.

17 MR. ARONOWITZ: Pursuant to the decree of divorce, Mrs. Williams was
18 awarded custody of the child, child support and the father of the child
19 was given visitation rights. This case presents more than the usual hard-
20 ship because of the fact that Miss Williams is a native of British Honduras.,
21 which is a sub-quota country. In the ordinary western hemisphere case, it
22 it would be capable to have her register as an intending immigrant and ask
23 for a reasonable wait perhaps two years, she would get an immigration visa.
24 In this case, however, because of the status of the quotas, she would have to
25 wait sixteen years until her child became 21 years of age, and thereby could
26 make a petition to afford her immediate relative status or classification.

- - 1 - -

(Appendix p.30)

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Miss Williams is a law abiding person. She has always paid her taxes. She
2 has a steady job. She is supporting her child. It is very close to the
3 time when she would be able to submit an application for suspension of de-
4 portation. Because of the fact that she has a child who would unquestionably
5 be subjected to extreme hardship in the case of deportation, I have every
6 reason to believe that an application for suspension of deportation would
7 be successful. I cannot predict that but I believe that would be the case.
8 In view of the short period of time before her eligibility to submit such an
9 application, I believe it would be cruel to enforce her departure and with it
10 the banishment of a five year old United States citizen child, probably for
11 the totality of his minority, at this time, I have nothing else.

12 IMMIGRATION JUDGE: Mr. Gurock?

13 MR. GUROCK: Sir, I call to your attention that on - in - 1974 in August
14 when you heard this case, you granted until December 16, 1974 within which
15 period respondent should leave the United States. At that time a divorce
16 proceeding was in progress. At that time the child was in being. Nothing
17 I presume was stated, I presume, at the hearing before you that additional
18 time was needed nor was any effort made to obtain any further time.....

19 MR. ARONOWITZ: Objection.

20 MR. GUROCK: Sir, I am not testifying here. I am making a statement.

21 IMMIGRATION JUDGE: Yes, Counsel, let's hear his statement and if you have any
22 rebuttal argument, I'll listen to it. Go ahead.

23 MR. GUROCK: Thereafter, a representation was made by this same firm, and she
24 was granted until January 10, 1975 to leave.

25 IMMIGRATION JUDGE: When was that done?

26 MR. GUROCK: That extension was granted by this Service on December 13, 1974.

1 At that time, application was made to this Service that she be granted a
2 one year extension of voluntary departure. It was denied.

3 IMMIGRATION JUDGE: You say that was denied and she was given until January
4 10th...

5 MR. GUROCK: Until January 10th to leave the United States. No appeal,
6 no motion, no nothing, until April of this year. Now, in 1973 we located
7 this woman. At that time she had separated from her husband and never gave
8 us her address. She then found us and as a result of which you had your hearing
9 in 1974 in August. She is now living in Amityville, New York, as far as I
10 know. On December 13th as I stated, request was made for time to remain
11 in the United States so that she could accumulate seven years for suspen-
12 sion....

13 IMMIGRATION JUDGE: What was that?

14 MR. GUROCK: That was on December 13th, counsel, as I stated just a moment
15 ago, made an application just what date is clear, a request was made for
16 time to remain in the United States for the seven years.

17 IMMIGRATION JUDGE: For one year?

18 MR. GUROCK: Yes, for the one year, and that was denied, and she was given
19 to January.

20 IMMIGRATION JUDGE: That was on the 13th?

21 MR. GUROCK: Application was made by counsel on December 13th, 1974 and she
22 was given until January 10, 1975. W/D. notification, warrant of deporta-
23 tion notification was - dated January 13th 1975 was sent to the subject and
24 to the attorney. No demand was made for this woman to surrender. No demand
25 has been made for surrender for deportation. No action was taken until
26 April 11, 1975 when for the first time counsel makes a motion on the same

1 grounds he has made before to secure additional time so she could accumulate 1
2 seven years. On that same day, the Immigration Service advised him and the
3 respondent that if she left on or before April 21, which is coming up,
4 voluntary departure would be restored. I report to you sir, all this leads
5 but to one conclusion. Counsel took no action or reaction to anything the
6 Immigration Service did in order to accumulate as much time as he could for
7 his client. There was no intention on her part at the time you granted her
8 voluntary departure to leave the United States, and at this time, it is ob-
9 vious that she does not intend to leave the United States. I say she is not
10 ready willing and able and the order of W. D. Warrant of Deportation should
11 stand as it is.

12 IMMIGRATION JUDGE: Counsel, the motion contains a notation by an officer
13 in behalf of the District Director dated April 11th that the request for a
14 stay was denied by that official and voluntary departure would be restored on
15 condition that subject leaves at her expense no later than April 21, 1975.

16 Is she prepared to leave if that privilege is extended to her at this time?

17 MR. ARONOWITZ: Not yet...

18 MR. GUROCK: May I ask that this copy of the Immigration Service letter both
19 to the subject and counsel dated April 11th be made part of the record.

20 IMMIGRATION JUDGE: He has no objection to that being part of the record file,
21 just a moment. Yes, Counsel?

22 MR. ARONOWITZ: I would like to respond to the statement by Mr. Gurock.
23 I remember very clearly the hearing that was held before you on August 16, 1974.
24 I do not recall who the Trial Attorney was...

25 IMMIGRATION JUDGE: But what's the point?

26 MR. ARONOWITZ: The point is that at all times in that hearing, it was clear

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 that this would ultimately be a suspension case. At that time, I asked for
2 a lengthy period of voluntary departure in order that she might ultimately
3 apply for suspension e.....

4 IMMIGRATION JUDGE: Counsel I am afraid you are under a misapprehension.
5 There is certainly nothing on the record that indicates that it would be a
6 suspension case unless you in your mind without disclosing it had that
7 intention in mind. At that time I granted four months extended voluntary
8 departure, that was more or less on consent and it was accepted as a final
9 order.

10 MR. ARONOWITZ: Yes, your honor, that was the period of time that was granted
11 also with the privilege that she might apply for additional time.

12 IMMIGRATION JUDGE: Well, counsel, the orders that I enter in these cases
13 generally provide for any extension that may be granted by the District
14 Director...

15 MR. ARONOWITZ: May I continue, sir?

16 IMMIGRATION JUDGE: Yes.

17 MR. ARONOWITZ: O. K. We made a timely application for an extension of
18 voluntary departure. The application was filed on December 13th... to the
19 District Director. The application was ultimately denied, and ultimately
20 a surrender notice issued.

21 MR. GUROCK: Sir, there is no surrender - I would like to see a copy of the
22 surrender notice?

23 MR. ARONOWITZ: z Here's is the surrender notice.

24 IMMIGRATION JUDGE: Mr. Gurock, I assume there is no objection to having this
25 made apart of the record.

26 MR. GUROCK: It bears on additional voluntary departure time.

TRANSCRIPT OF HEARING

1 IMMIGRATION JUDGE: Yes, counsel.

2 MR. ARONOWITZ: Immediately as I received the surrender notice, I submitted
3 this motion which requested reopening of the proceedings so that she may be
4 granted voluntary departure once again with the idea of - that she could
5 then apply for suspension within a few months. I begged the category officer
6 to make a quick decision on this administratively and forward the motion
7 for your consideration. He made a quick decision, it was denied adminis-
8 tratively, the same day.

9 IMMIGRATION JUDGE: All right, now the motion is before me, Counsel.

10 Now is there anything else on it?

11 MR. ARONOWITZ: Yes, there is more. As days passed and no action was taken
12 to advise me that this motion would be heard, I did two things. I initiated
13 an action in the United States District Court for the Southern District of
14 New York on the ground that the denial of the stay of deportation was an
15 abuse of discretion under the circumstances. That action is pending.

16 IMMIGRATION JUDGE: Still pending? Well, Counsel, you should have mentioned
17 that to me at the very outset.

18 MR. GUROCK: It should make any difference.,.

19 IMMIGRATION JUDGE: Counsel tell me when that action was filed, the request
20 for the stay you just referred to?

21 MR. ARONOWITZ: That action was filed on April 16, 1975, against the
22 District Director April 16, 1975 in the United States District Court for the
23 Southern District of New York. The number is 75 civil 1842. No hearing has
24 been held on that.

25 IMMIGRATION JUDGE: Now specifically what request was made in that action?

26 MR. ARONOWITZ: For a declaratory judgment that the District Director's denial

TRANSCRIPT OF HEARING

of the requested stay of deportation was an abuse of discretion. Shall I
1
read all the request, and the ancillary.....
2

3 IMMIGRATION JUDGE: Well, let me hear what Mr. Gurock wishes to say.

4 MR. GUROCK: On the 16th of April, the alleged motion was still pending in
5 this Service and it was put before you, and you are the only one who can
6 decide this motion because it is your case, sir.
7

8 IMMIGRATION JUDGE: Well, actually the motion just came to my attention
9 today.
10

11 MR. GUROCK: That's true, sir, but the motion is directed to you.
12

13 MR. ARONOWITZ: And wilfully withheld.
14

15 IMMIGRATION JUDGE: Well, now counsel, I don't know if there is any basis
16 for that statement, let's not get into characterizations yet.
17

18 MR. GUROCK: And prior to any knowledge on counsel's part that anything was
19 going to be done or not going to be done, as far as the motion was concerned,
20 he saw fit to go into court asking for the same relief he is asking you.
21

22 IMMIGRATION JUDGE: What is your position?
23

24 MR. GUROCK: He has taken this to the court. He has asked for the juris-
25 diction to be submitted to the court to have the court take jurisdiction of it.
26 And I am saying he is he has chosen the forum...
27

28 IMMIGRATION JUDGE: And are you saying is, my part should be deferred pending
29 decision by the court?
30

31 MR. GUROCK: No, sir, my statement to you sir is that you should deny it.
32 And let him stay where he is in the courts. I understand a denial is
33 expected in this case. This case does not merit...REINSTATEMENT of voluntary
34 departure.
35

36 MR. ARONOWITZ: I object to that and I find it incredible that the Trial
37

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Attorney chooses to object to my trying to find a judicial ruling for my
2 client. As you all know this motion was not actually referred to you by
3 that date, and that the motion does not act to stay deportation and that I
4 have no way of predicting what is going to happen. I had to take an action
5 in the District Court in order to protect the rights of my client.

6 IMMIGRATION JUDGE: All right, Counsel, I get the posture of the case
7 now. Gentlemen, we will take a recess at this time and we will reconvene
8 next with this motion at one p.m.

9 IMMIGRATION JUDGE: The proceeding is resumed. Now, gentlemen is there
10 anything further you want, either of you to present, with this motion?

11 MR. ARONOWITZ: No, your honor.

12 MR. GUROCK: No, your honor.

13 IMMIGRATION JUDGE: One thing needs clarification, the date the respondent
14 was separated from her husband. Mr. Aronowitz?

15 MR. ARONOWITZ: Yes?

16 IMMIGRATION JUDGE: I understand the respondent was separated from her
17 husband for some period of time prior to her divorce. Can you tell me
18 when the separation occurred?

19 MR. ARONOWITZ: The separation agreement entered into by the parties dated
20 September 28, 1972.

21 IMMIGRATION JUDGE: And from that date to date of divorce was any action
22 taken by the respondent to reconcile?

23 MR. ARONIWITZ: No your honor.

24 IMMIGRATION JUDGE: Mr. Gurock, will the Service proceed with the deportation
25 of the respondent unless ^{she} ^{he} ^{if} ^{they} ^{themselves} depart themselves?

26 MR. GUROCK: Yes, your honor.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 IMMIGRATION JUDGE: All right, gentlemen, I have considered this matter fully
2 both in connection with the written motion and the oral representations
3 and I am going to deny the request for any further stay of deportation
4 within my power to grant and also to deny the motion in its entirety.
5 Now I propose to enter a written memorandum amplifying the reasons for
6 the decision as soon as time will permit, but that is my decision in the
7 matter.

MR. ARONOWITZ: I presume I would have the right to appeal this?

IMMIGRATION JUDGE: That's within your province.

10 MR. ARONOWITZ: Will there also be a stay granted pending decision on the
11 appeal?

12 IMMIGRATION JUDGE: No, I will not grant such a stay. No. I am considering
13 the question of a stay as far as it is in within my power to grant a stay
14 and I am terminating it at this time.

15 MR. ARONOWITZ: How can I appeal from the decision.

16 IMMIGRATION JUDGE: You can submit a notice of appeal.

17 IMMIGRATION JUDGE : You can do that.

MR. ARONOWITZ: Will that operate as a stay? While the appeal is heard?

IMMIGRATION JUDGE: No, under the regulations it does not.

20 I certify the foregoing NINE pages to be a true and complete transcript
21 of the within ORAL ARGUMENT ON MOTION as described above.

Patrick J. Killeen
Transcriber

April 11, 1975

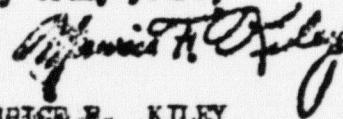
Mrs. Marilyn Ina WILLIAMS
135 Columbus Boulevard
Amityville, L.I., N.Y., 11701

Dear Madam:

Reference is made to an application for Reopening of your Deportation Hearings and restoration of voluntary departure, submitted on your behalf on April 11, 1975 by your attorney Charles Aronowitz.

Please be advised that the application has been denied. However, voluntary departure will be restored in your case on the condition that you effect your departure from the United States at your own expense no later than April 21, 1975.

Very truly yours,



MAURICE F. KILEY
District Director
New York District

CCs: Charles Aronowitz, Esq.
225 Broadway
New York N.Y., 10007

C/b

(Appendix p.39)

April 11, 1975

U.S. Immigration & Natl. Service
20 West Broadway
New York, N.Y. 10007

Re: Marilyn Ina Williams,
A19 486 461

MOTION TO REOPEN DEPORTATION PROCEEDINGS
and REQUEST FOR STAY OF DEPORTATION

Citizens:

On behalf of Marilyn Ina Williams I respectfully move that deportation proceedings be reopened in order that she may request restoration of voluntary departure. She is also within six months of being eligible to request suspension of deportation. In view of the facts that she is the mother of a five-year-old citizen of the United States and that, as a native of British Honduras, she faces at least a 16-year wait for issuance of an immigrant visa, Marilyn Williams should be given the opportunity to apply for suspension.

There are no adverse factors in this case to warrant an attempt to enforce departure shortly before eligibility for suspension. In consideration that a deportation would also effectively deprive a United States citizen child of his right to be brought up in the country of his birth, I am confident that an attempt to deport would be found to be needlessly punitive under the circumstances.

Marilyn Williams has been requested to surrender for deportation on April 21, 1975. I request that her deportation be stayed until November 15, 1975, or, in the alternative, until final disposition is made of this motion to reopen proceedings.

Sincerely yours,

BEST COPY AVAILABLE

Charles Aronowitz

(Appendix p.40)

20 West Broadway
New York, N.Y., 10007

A19 486 461 DB/JJH

December 30, 1974

Mrs. Marilyn Ina WILLIAMS
135 Columbus Boulevard
Amityville, L.I., N.Y., 11701

Dear Madam:

Reference is made to an application for an extension of Voluntary Departure made on your behalf on December 13, 1974, by your attorney, Charles Aronowitz.

Kindly be advised that after a careful review of your case, your request has been denied. However, voluntary departure will be restored in your case provided you present a ticket for your departure from the United States no later than January 10, 1975. You are requested to present your travel arrangements to the deportation section on or before January 9, 1975.

Very truly yours,

Joe D. Howerton

JOE D. HOWERTON
Acting District Director
New York District

CC: Charles Aronowitz, Esq.
225 Broadway
New York, N.Y., 10007

JJH/mb

(Appendix p.41)

December 13, 1974

U.S. Immigration & Natz. Service
20 West Broadway
New York, N.Y. 10007

Att: Deportation Branch

Re: Marilyn Ina WILLIAMS,
A19 486 461

Gentlemen:

The above-cited alien was granted voluntary departure by an immigration judge until December 16, 1974. She is a native of Belize and has a United States citizen child, born March 31, 1970.

On October 30, 1974, she was divorced from her permanent resident spouse. She was awarded custody of their child. Her ex-husband, pursuant to the terms of the decree, is obliged to make payments for support and maintenance. A copy of the decree is attached. The child's father has visitation rights.

Mrs. Williams entered the United States in October 1968. Accordingly, in less than one year she will be eligible for suspension of deportation.

I request that Mrs. Williams either be granted a one year extension of voluntary departure or that her case be considered by the Investigations Branch for nonpriority processing.

The reasons for this request are as follows: Mrs. Williams, as a native of Belize, is not eligible for special immigrant status based upon the birth of a citizen child. There is no way for her to receive an immigration visa until the child becomes 21 and may then petition for her as an IR-5.

If she departs with the child, said child, a United States citizen, will be permanently barred from being raised in the United States. In addition, the child will not be able to benefit from the visitation rights accorded to his father. Furthermore, it is unlikely that the child's father will honor the support aspects of the order in the absence of his former wife.

BEST COPY AVAILABLE

(Appendix p.42)

The closeness to eligibility for suspension of deportation plus the obviously harmful effects a deportation would have upon her United States citizen child is sufficient equity to justify granting the requested extension.

I would appreciate being informed of your decision in this matter.

Sincerely yours,

Charles Aronowitz

(Appendix p.43)

At a Special Term; Part V, of the
Supreme Court of the State of New
York, held in and for the County
of Suffolk, at the Courthouse,
Veterans Memorial Highway, Hauppauge,
New York, on the 30th day of OCTOBER
1974.

PRESIDENT:

HON. LAWRENCE J. BRACKEN,
Justice,
KENNETH WILLIAMS, ----- X
Plaintiff,
-against-
MARILYN WILLIAMS,
Defendant.
----- X

Entered
10/13/74
10/13 PM
FINDINGS AND JUDGMENT
Index No. 74-426

The Plaintiff having brought this action for a judgment of absolute divorce by reason of the plaintiff and defendant having lived separate and apart pursuant to a written agreement of separation for a period of one or more years, and the summons bearing the notation "Action for Divorce" together with a verified complaint having been personally served upon the defendant and the defendant having appeared by Siben & Siben, Esqs., and the defendant having answered the complaint, and having thereafter, in Court, withdrawn her answer, and the matter having come on for trial before me on the 1st day of October, 1974, and the parties having appeared before me and presented their written and oral proof be-

fore the Court and such proof having been heard and considered by me, I decide as follows:

FINDINGS

FIRST: That plaintiff and defendant were over the age of 21 years when this action was commenced.

SECOND: That for a continuous period of at least two years immediately preceding the commencement of this action plaintiff resided in this State.

THIRD: That the plaintiff and defendant were married on February 28, 1970 in Amityville, New York.

FOURTH: That there is one (1) infant issue of this marriage, to wit: SHELDON DEAN WILLIAMS, born March 31, 1970.

FIFTH: That the plaintiff and defendant entered into a written agreement of separation dated the 23rd day of September, 1972 which they subscribed and acknowledged in the form required to entitle a deed to be recorded; and a copy of said Separation Agreement was filed in the office of the Clerk of the County of Suffolk on October 16, 1972; and that the parties have lived separate and apart for a period of one or more years after the execution of said agreement; and that the plaintiff has substantially performed all of the terms and conditions of said agreement.

CONCLUSIONS OF LAW

FIRST: That jurisdiction as required by Section 230 of the Domestic Relations Law has been obtained.

SECOND: That the plaintiff is entitled to a judgment of divorce and granting the incidental relief awarded herein, in the Judgment signed this date.

JUDGMENT

Now, upon motion of TRIMARCO & DILLON, ESQS., attorneys for the plaintiff, it is

ORDERED, ADJUDGED AND DECREED, that the plaintiff, RICHARD WILLIAMS, is awarded absolute divorce against the defendant, MARILYN WILLIAMS, and that the marriage between the plaintiff and defendant is dissolved by reason of the plaintiff and defendant having lived separate and apart for a period of one or more years pursuant to a written agreement of separation, and it is further

ORDERED, ADJUDGED AND DECREED that the defendant, MARILYN WILLIAMS, is awarded custody of the infant issue of the marriage, to wit, SHELTON DEAN WILLIAMS, born March 31, 1970, and it is further,

ORDERED, ADJUDGED AND DECREED that pursuant to stipulation in Court between the parties herein, the Husband shall pay to the Wife the sum of \$1500.00 as and for all past arrears due for support of the wife and child pursuant to the separation agreement. Said \$1500.00 payment shall be due and payable within 60 days from October 30 1974, and it is further

ORDERED, ADJUDGED AND DECREED that ~~pursuant to stipulation in Court between the parties herein~~, plaintiff shall pay as defendant's

counsel fees directly to the defendant's attorneys the sum of \$250.00 payable as follows: \$100.00 upon entry of this decree and \$25.00 per month thereafter until the balance of said counsel fee is paid, and it is further

ORDERED, ADJUDGED AND DECREED that ~~pursuant to stipulation~~
~~In Court between the parties herein,~~ the Husband shall have the following rights of visitation of the child, SHELDON DEAN WILLIAMS: Saturday or Sunday of each week from 10:00 A.M. to 6:00 P.M. upon 24 hours notice, one weekend per month from Friday at 7:00 P.M. to Sunday at 7:00 P.M. upon ~~3 weeks~~^{one (1)} notice, alternate holiday visitation, and two weeks during the summer on 30 days notice, and it is further

S.B.
J.S.C.

ORDERED, ADJUDGED AND DECREED, that the Separation Agreement entered into between the parties on September 28, 1972, a copy of which is on file with the Court, shall survive and shall not be merged in this judgment and the Court retains jurisdiction of the matter, concurrently with the Family Court, for the purpose of specifically enforcing such of the provisions of that agreement as are capable of specific enforcement or, to the extent permitted by law, of making such further decree with respect to alimony, support, custody or visitation as it finds appropriate under the circumstances existing at the time application for that purpose is made to it, or both, and it is further,

ORDERED, ADJUDGED AND DECREED that the defendant may resume
use of her maiden name, To wit: Garrott.

ENTER:

LAWRENCE L. KELLY

J.S.C.

L.M.

Lester M. Albertson
Clerk

FILED

NOV 7 1974

M.
Lester M. Albertson
County Clerk
Suffolk County, New York

COUNTY CLERK'S OFFICE
STATE OF NEW YORK }
COUNTY OF SUFFOLK } SS.:

I, LESTER M. ALBERTSON, Clerk of the County of Suffolk and
the Court of Record thereof do hereby certify that I have compared the
annexed with the original *Funders Judgment* FILED in my
office *November 7, 1974* and, that the same is a true
copy thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed
the seal of said County and Court this *15th day of November, 1974,*

Clerk.

(Appendix p.48)

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of
WILLIAMS, MARILYN INA

Respondent.

In Deportation Proceedings Under Section 242
of the Immigration and Nationality Act

**DECISION OF THE
IMMIGRATION JUDGE**

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before Dec 16, 1979
(Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to _____
on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to _____

Copy of this decision has been served on respondent.

Appeal: Waived—reserved

Date: 12/16/79

Place: NYC

Mary Williams
(Immigration Judge)

(Appendix p.49)

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 19 436 461

MARILYN INA WILLIAMS

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Henry I. Millman

Before: _____, Immigration Judge

August 16, 1974

20 West Broadway, N.Y., N.Y. (7)

Date: _____ Place: _____

Transcribed by Patrick J. Killela Recorded by Dictabelt

Official Interpreter No one

Language English

APPEARANCES:

For the Service:

William Dunlop, Esqs.

Trial Attorney

Station

For the Respondent:

Charles Aronowitz, Esq.

225 Broadway

New York, N.Y.

(Appendix p.50)

1 IMMIGRATION JUDGE TO THE RESPONDENT (in English):

2 Q Will you state your full name?

3 A Marilyn Ina Williams.

4 Q Are you also known as Marily Ina Williams?

5 A Yes.

6 Q I have before me an Order to Show Cause and Notice of Hearing issued by an
7 Immigration Officer on August 5, 1974 charging that a person of your name
8 is subject to deportation. Did you get a copy of this paper?

9 A Yes.

10 Q The purpose of this hearing is to decide what should be done with you
11 under the immigration laws of the United States, do you understand?

12 A Yes.

13 Q At this hearing are you represented by Mr. Aronowitz, as your lawyer?

14 A Yes.

15 IMMIGRATION JUDGE: Counsel, are you ready to proceed with this hearing now?

16 MR. ARONOWITZ: Yes, your honor.

17 IMMIGRATION JUDGE: Mr. Dunlop, are you?

18 MR. DUNLOP: Yes, your honor.

19 IMMIGRATION JUDGE TO RESPONDENT:

20 Q Ma'am, will you stand up please and raise your right hand. Do you
21 solemnly swear that all the statements you are about to make in this
22 proceeding will be the truth, the whole truth, and nothing but the truth,
23 so help you God?

24 A Yes, I do.

25 Q All right, just be seated.

26 IMMIGRATION JUDGE: I am now entering the Order to Show Cause in this case

1 as Exhibit number One. I assume there is no objection?

2 MR. ARONOWITZ: No objection.

3 IMMIGRATION JUDGE: Now as the result of an informal conversation ~~and~~ it
4 appears that there are typographical errors appearing in the Order to Show
5 Cause in Allegations numbers 3 and 5 and those allegations should
6 refer to the time as specified respectively therein as October 1968 in
7 allegation 3, and April 1969 in allegation five. Is that correct, gentle-
8 men?

9 MR. ARONOWITZ: Correct.

10 MR. DUNLOP: That's correct, your honor.

11 IMMIGRATION JUDGE: Then for the purpose of this proceeding, is it agreed
12 that those allegations may be deemed to be amended to show the entry as
13 occurring in October 1968, and the authorization to remain in the United
14 States until April 1969, without any further notice or formality?

15 MR. ARONOWITZ: Yes, your honor.

16 MR. DUNLOP: Yes, your honor.

17 IMMIGRATION JUDGE: And ⁱⁿ this respect, Counsel, you expressly waive
18 the lodging of a corrected allegation?

19 MR. ARONOWITZ: Yes, your honor.

20 IMMIGRATION JUDGE: And, as amended, Counsel, do you waive the reading
21 of the allegations and the charge contained in the Order to Show Cause,
22 is that correct?

23 MR. ARONOWITZ: Correct.

24 IMMIGRATION JUDGE: And your application is for voluntary departure?

25 MR. ARONOWITZ: Yes.

26 IMMIGRATION JUDGE: You concede of course the ~~a~~ truth of the amended

~~allegations and depo~~

- 2 -

1 allegations and deportability as charged?

2 MR. ARONOWITZ: Yes.

3 IMMIGRATION JUDGE TO RESPONDENT:

4 Q Now, madam, your lawyer has admitted in your behalf that you are
5 subject to deportation, that is, you have no right to stay in this
6 country any longer because after having been admitted as a visitor
7 for pleasure you have remained here for a longer time than allowed.

8 Do you understand?

9 A Yes.

10 IMMIGRATION JUDGE: Counsel, do you wish to question the respondent in
11 connection with the application for voluntary departure?

12 MR. ARONOWITZ: Yes, your honor.

13 IMMIGRATION JUDGE: All right, proceed.

14 MR. ARONOWITZ TO RESPONDENT:

15 Q Have you ever been arrested by the police or charged with a crime
16 anywhere in the world?

17 A No.

18 Q Have you ever been a member of any Communist organization?

19 A No.

20 Q If you are given the privilege of voluntary departure instead of
21 being deported, will you pay your own transportation?

22 A Yes.

23 Q Would you be willing to go within whatever period of time is granted
24 you by the Immigration Service?

25 A Yes.

26 Q At this time are you married to a citizen of the United States?

1 A Yes.

2 Q Do you have any children?

3 A Yes.

4 Q How old is your child and where was he born?

5 A He is four years old and he was born in the United States.

6 MR. ARONOQITZ: Born in United States. No further questions.

7 IMMIGRATION JUDGE: Mr. Dunlop is there anything that you wish to develop

8 MR. DUNLOP: Yes, just one simple question.

9 MR. DUNLOP TO RESPONDENT:

10 Q Have you ever been on public relief?

11 A No.

12 MR. DUNLOP: That's all your honor.

13 IMMIGRATION JUDGE: Is there anything you wish to say with respect to
14 counsel's request for voluntary departure time?

15 MR. DUNLOP: Oh, yes sir. We had an off the record discussion here your
16 honor and we agreed that four months voluntary departure would be agreeable.

17 IMMIGRATION JUDGE TO RESPONDENT:

18 Q Madam, your lawyer has asked that you be given a chance to leave the
19 United States voluntarily instead of being deported. If you are given
20 a period of four months to leave, subject to any extension that may be
21 granted, but there is no guarantee that you will get any extension of
22 time, will you depart when required?

23 A Yes.

24 Q And, if you don't leave (when you should) and the government proposes
25 to deport you, where do you want to be sent? To what country?

26 A British Honduras.

TRANSCRIPT OF HEARING

1 Q Is there any reason why you can't return to British Honduras?

2 A No.

3 IMMIGRATION JUDGE: All right then, gentlemen, I propose to enter my order
4 on the Form I-39. Is there any objection Mr. Aronowitz?

5 MR. ARONOWITZ: None, your honor.

6 IMMIGRATION JUDGE: Mr. Dunlop?

7 MR. DUNLOP, No, your honor.

8 IMMIGRATION JUDGE TO RESPONDENT:

9 Q My order is as follows madam, that you be granted permission to leave
10 the United States voluntarily without expense to the government on or
11 before December 16, 1974, but my order further provides that if you
12 don't leave when required that you be deported to British Honduras. Do
13 you understand?

14 A Yes.

15 IMMIGRATION JUDGE: Counsel, do you waive appeal?

16 MR. ARONOWITZ: Yes, your honor.

17 IMMIGRATION JUDGE: Mr. Dunlop, do you likewise waive appeal?

18 MR. DUNLOP: Yes, sir.

19 IMMIGRATION JUDGE: All right, the hearing is closed.

20 I certify the foregoing four pages numbered one thru four, is a complete
21 and accurate transcript of the within hearing heard on ^{April} ~~August~~ 16, 1975.
22

24 _____
25 Patrick J. Killela
26 Transcriber

- 4 -

TRANSCRIPT OF HEARING (Appendix p.55)
United States Department of Justice — Immigration and Naturalization Service

initial 2

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. A19 486 461

In the Matter of WILLIAMS, Marylyn Ina
(nee GARBUZZ)

Respondent.

135 Columbus Blvd., Amityville, New York
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of British Honduras
and a citizen of United Kingdom and Colonies
3. You entered the United States at Buffalo, New York on
or about October, 1968
(date)
4. At that time you were admitted as a nonimmigrant visitor for pleasure.
5. You have been authorized to remain in the United States until 4/1969.
6. You remained in the United States thereafter without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration judge of the Immigration and Naturalization Service of the United States Department of Justice at 20 West Broadway, New York, New York - 14th Floor on August 16, 1974 (s) at 8:45 A.M., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: August 5, 1974

Henry S. Meltzer

(signature and title of issuing officer)
ASSISTANT DISTRICT DIRECTOR
FOR INVESTIGATIONS, N.Y., N.Y.
(City and State)

APPEAR WITH PASSPORT AND
IMMIGRATION DOCUMENTS

(Appendix p.56)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A18 103 712 - New York

MAR 19 1973

In the matter of)

ERODITA AGARD) IN DEPORTATION PROCEEDINGS

Respondent)

CHARGE: I & N Act - Section 241(a)(2) (8 USC 1251(a)(2)) -
remained longer - visitor

APPLICATION: I & N Act - Section 244(a)(1) (8 USC 1254(a)(1)) -
Suspension of deportation; in alternative, voluntary
departure

In Behalf of Respondent:

Charles Aronowitz, Esq.
57 Park Place
New York, N. Y. 10007

In Behalf of Service:

No one

DECISION OF THE SPECIAL INQUIRY OFFICER

Respondent's original deportation hearing was January 29, 1969. In decision which became final that date she was found deportable as charged but given voluntary departure. Upon respondent's motion proceedings were reopened to give her opportunity to apply for suspension of deportation. Reopened hearing adduced nothing new regarding the deportability issue.

DISCUSSION AS TO DEPORTABILITY: Respondent, alien, native of British Honduras, subject of the United Kingdom and Colonies, was born October 6, 1943. Her only entry to the United States was September 26, 1964 as a

visitor later permitted to stay till June 15, 1965. Without authority she remained longer. Respondent's previously found deportability continues presently.

DISCUSSION AS TO ELIGIBILITY FOR SUSPENSION OF DEPORTATION: At reopened hearing respondent applied, under provisions of Section 244(a)(1) of the Immigration and Nationality Act, for suspension of deportation. She is not deportable on any of the provisions of law referred to in Section 244(a)(2) of that Act.

Inquiry discloses respondent has had no connection with subversive groups. Statements of witnesses interviewed during independent character investigation conducted by this Service, as well as reports from federal and local authorities, and also documentation from British Honduras police, confirm respondent's claim that she has no arrest record. The same report of investigation plus record of proceedings before this Service including extensions of departure time, marriage and childrens' birth certificates, and employer's statement, establish that respondent has been continuously physically present in the United States at least the seven years immediately preceding her suspension application. For at least that period respondent is found to have been continuously physically present here and of good moral character.

Before coming to the United States respondent always lived in British Honduras where she had a total of 11 years schooling. She never there was employed for pay. In the United States she worked as a domestic, a laundress, a supermarket wrapper, a hospital general worker and, since

February 2, 1971, an office clerk. Her present employer, Nabisco, (the National Biscuit Company), recommends her and reports respondent is "loyal, sincere, hard working, extremely pleasant and properly inquisitive." Her current net pay is \$110 weekly.

Respondent's only marriage was June 7, 1967 in New York, N. Y. The couple have two children, native born citizens. While the husband-father was serving in the United States Army he was killed January 31, 1968. Respondent now receives \$218 monthly veteran's death benefits and \$150 a month social security payments for support of the two children. They are in a day nursery while respondent is at her place of employment.

Respondent additionally has two other children, aliens, born and living in British Honduras, cared for by her aunt for which respondent sends \$75 monthly. Respondent states her assets approximate \$500 cash, personal effects valued at \$2000 and a \$1000 equity in the home where she and the two citizen children live. There is a mortgage balance of about \$16,000 on which respondent pays \$177 monthly. She testifies that neither she nor her children have ever been supported by welfare. Her additional family in the United States comprise an uncle, assertedly a citizen, and the latter's daughter. Respondent has two brothers and a sister, aliens, natives of British Honduras, there residing. Her parents are deceased.

Respondent asserts that if required to leave the United States extreme hardship would ensue to her and the two United States citizen children.

(Appendix p. 5.)

She states the children would have to accompany her to British Honduras and that they would then lose the advantage of an American education and upbringing. Respondent states additionally the loss of the freedoms, opportunities and the democracy existing here would be a most serious deprivation both to them and her. Moreover, outside the United States respondent could not within the reasonably foreseeable future obtain an immigrant visa because unable to procure the labor certification called for by Section 212(a)(14) of the Immigration and Nationality Act.* Requiring the departure of respondent, widow of a C. I. and mother of ^{citizen} two children, would be an extreme hardship both for her and those children.

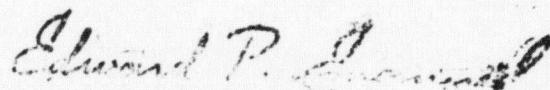
Respondent, accordingly, meets the statutory requirements for suspension of deportation observing, as we do, that she is not eligible for a special immigrant visa and hence not within the proscription of Section 244(f)(3) of the Immigration and Nationality Act. This is a worthy case for suspension.

ORDER: IT IS ORDERED that the deportation of the respondent be suspended under the provisions of Section 244(a)(1) of the Immigration and Nationality Act, as amended.

IT IS FURTHER ORDERED that if Congress takes no action adverse to the order granting suspension of deportation, the proceedings be cancelled, and that appropriate action be taken pursuant to Section 244(d) of the Immigration and Nationality Act, as amended.

* Though that Section exempts the parent of a citizen child from the necessity of a labor certification, the exemption is not applicable to respondent. The exemption relates only to special immigrants. Respondent is not a special immigrant despite her Western Hemisphere birth because she is chargeable to the British Honduras sub-quota of Great Britain and Northern Ireland. (Appendix p.60)

IT IS FURTHER ORDERED that in the event Congress takes action adverse to the order granting suspension of deportation these proceedings shall be reopened upon notice to the respondent.



EDWARD P. EMANUEL
Special Inquiry Officer

(Appendix p.61)

Interim Decision #2172

MATTER OF SIPUS

In Deportation Proceedings

A-14293683

Decided by Board November 10, 1972

- (1) A mere showing that an alien has achieved the minimum statutory period of continuous physical presence for suspension of deportation does not, without more, justify granting a motion to reopen the deportation proceedings to permit an application for suspension.
- (2) A motion to reopen the proceedings should disclose all prior and pending judicial litigation in the case.

CHARGE:

Order: Act of 1952 - Section 241(a)(2) [8 U.S.C. 1251(a)(2)] - Non-immigrant visitor - remained longer than permitted.

ON BEHALF OF RESPONDENT:
Hiram W. Kwan, Esquire
840 North Broadway
Los Angeles, California 90012
(Brief filed)

ON BEHALF OF SERVICE:
William S. Howell
Trial Attorney

This is an appeal from an order of a special inquiry officer denying the respondent's motion to reopen the deportation proceedings to allow her to file an application for suspension of deportation under section 244 (a)(1) of the Immigration and Nationality Act. Oral argument, which is requested, is no longer available as a matter of right on such an appeal, 8 C.F.R. 3.1(e). Oral argument will be denied and the appeal will be dismissed.

Respondent is a 51-year-old married female alien, a native and citizen of the Philippines, who was admitted to the United States on July 26, 1965 as a nonimmigrant visitor and remained longer than permitted. At a hearing before a special inquiry officer on January 28, 1969, she admitted the factual allegations of the Order to Show Cause, conceded deportability and applied for voluntary departure. The special inquiry officer found her deportable and granted voluntary departure to March 1, 1969. She failed to depart.

On April 29, 1972, counsel filed a motion to reopen the proceedings so that respondent might file an application for suspension of deportation. Attached to the motion was a filled-out suspension application. The motion to reopen, which is unsupported by any affidavit or other evidence, is extremely brief. Its essence is contained in two short paragraphs:

"[III] Respondent is statutorily eligible for suspension of deportation having first entered the United States in March 1962. It is believed her case falls squarely within 12 I & N Dec. 271.

"[IV] Counsel is prepared to present the necessary evidence at the time of hearing."

The suspension application recites that respondent first entered the United States as a visitor on March 27, 1962 and was absent thereafter but once, from December 1964 to the date of her last entry on July 26, 1965. The Service's trial attorney opposed the motion on the ground that this absence of almost eight months broke the continuity of the seven years' physical presence required by section 244(a)(1) of the Act. The special inquiry officer agreed and denied the motion in his order dated May 23, 1972, now before us on appeal.

The issue raised on appeal is now moot. More than seven years have now elapsed since respondent's last entry on July 26, 1965. We therefore need not consider whether her preceding absence broke the continuity of her physical presence following the 1962 entry. Since she can now establish the minimum required period of physical presence, we would ordinarily reopen and remand if her motion papers made out a *prima facie* case for reopening in other regards. In our view, they do not.

The motion to reopen, as we have noted, is singularly lacking in factual detail. The suspension application reflects that respondent's husband, whom she married on December 24, 1942, is a self-employed farmer in the Philippines. Respondent's five children, ranging in age from 9 to 27, are natives and citizens of the Philippines and presumably now reside there since their present residence is not indicated. Neither the husband nor any of the children is listed as a permanent resident alien. Respondent also lists six brothers and sisters, all natives and citizens of the Philippines, now also presumably residing there. Since December 1966 respondent has been employed as a domestic and now earns \$125 a week. She states she cannot return to her native land because of "financial hardship."

As we pointed out in Matter of Lam, Interim Decision 2136 (BIA 1972), continuous physical presence for the minimum statutory period is only one of the eligibility requirements for suspension of deportation. There are others, including a showing that the alien's deportation would result in extreme hardship to the alien or other specified family members who are citizens or legally resident aliens. The pertinent regulations 1/

1/ Reopening before the Service is governed by 8 C.F.R. 242.22 and 103.5. Reopening before the Board is governed by 8 C.F.R. 3.2 and 3.8.

require that a motion to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material.

No hard and fast rule can be laid down as to what constitutes a sufficient showing of a prima facie case for reopening. Much depends on the nature of the case and the force of the evidence already appearing in the record sought to be reopened. Where that record is negative or contains mere factors, a mere statement of conclusory allegations with respect to the statutory prerequisites is seldom enough. Where reopening for suspension purposes is sought, a mere showing that the alien has at last achieved the minimum statutory period of continuous physical presence does not ordinarily, without more, establish the other statutory prerequisites sufficiently to warrant reopening for a plenary hearing. On the other hand, we have on occasion overlooked the technical inadequacy of a motion to reopen where the new facts alleged, when coupled with the facts already of record, satisfy us that it would be worthwhile to develop the issues further at a plenary hearing on reopening.

On the record now before us, we cannot infer from the mere fact that respondent can now establish seven years' continuous physical presence that she may also be able to prove the prerequisite extreme hardship if given a chance at a reopened hearing. From what already appears, it is clear that all her close relatives are in the Philippines. Respondent's deportation there, far from causing extreme hardship by separating her from her family, would serve to reunite her with them. Insofar as concerns the "financial hardship" which she asserts in her application, it has been consistently held that mere economic detriment, without more, is not enough to make out the extreme hardship required by the statute, Kastavi v. INS, 400 F.2d 675 (9 Cir. 1968); Kwan Shick Myung v. INS, 308 F.2d 330 (7 Cir. 1966).

If there are other facts in counsel's possession which would tend to make out a case of extreme hardship, he has not made them known. The special inquiry officer cannot be expected to act on conjecture. Counsel's unsupported and conclusory assertion in the motion that he "is prepared to present the necessary evidence at the time of hearing" does not tell us or the special inquiry officer what evidence he is prepared to present and does not satisfy us that the additional delay entailed in a reopening would likely be worthwhile. We conclude that the special inquiry officer properly denied the motion to reopen.

One further aspect of this case should be mentioned. From the record now before us, it appears that on May 11, 1972, after he had filed the motion to reopen but before the special inquiry officer had ruled on it, counsel for respondent filed a petition under section 106(a) of the Immigration and Nationality Act to review the original deportation order, Sibus v. INS, 9 Cir. No. 72-1853. On June 16, 1972, the court entered an order dismissing the petition for review and dissolving the statutory stay of deportation automatically available under section 106(a)(3) of the Act. On June 21, 1972, counsel petitioned the court for rehearing. In his supporting memorandum, counsel challenged the special inquiry officer's order now before us on appeal and argued, on the "extreme hardship" issue, that "[Respondent], at the age of 51 and with no recent employment history in her native country, would experience extreme difficulty in finding work of any kind if she were deported to the Philippines." On June 28, 1972 the court denied the petition for rehearing.

We mention the court proceedings for two reasons: First, in court counsel went into considerably more detail in defining the extreme hardship claim than he did either before the special inquiry officer or before this Board on appeal. Even with these additional details, we are satisfied that a *prima facie* case for reopening is not made out.

Second, we note that neither in his notice of appeal dated June 3, 1972, nor in his brief on appeal to this Board bearing the same date, did counsel mention the proceedings for judicial review then pending. We have previously pointed out how important it is that we be informed of court litigation brought by a party to a proceeding before us which might affect our decision in that proceeding. See Matter of Wong, Interim Decision 1971 (BLA 1969); 8 C.F.R. 3.8(a). Prior litigation is important because, among other things, the judgment entered therein may have res judicata effect. It is equally necessary that we be informed of pending litigation, so that we may either withhold or shape our decision in such a way as not to impinge upon the jurisdiction of the court. If counsel deliberately withheld this information from us, we could only regard it as a lack of the good faith which we are entitled to expect from attorneys who appear before us.

We have no reason to believe that either of the Ninth Circuit's judgments has conclusive effect on the issue now before us. The petition for review dismissed by the court's order of June 16, 1972 dealt with the original deportation order and not the special inquiry officer's order now before us. While counsel sought to draw the latter order into the court proceedings in his petition for rehearing, it is clear that he did not succeed. In denying the petition for rehearing, the court wrote no opinion. It is fairly inferrable, however, that the court's refusal to entertain respondent's challenge to the special inquiry officer's order was due to respondent's failure to exhaust her administrative remedy of appeal to this Board, as required by section 106(c) of the Act. We see no reason to regard the court's order of June 28, 1972 as an adjudication on the merits of the issue now before us. Accordingly, we shall enter an order disposing of the appeal before us on its merits.

ORDER: The appeal is dismissed.

Warren R. Torrington, Member, Concurring:

I concur in the result, but not in the unnecessary, inaccurate, and misleading statements which appear in the following paragraph quoted from the Board opinion.

"No hard and fast rule can be laid down as to what constitutes a sufficient showing of a prima facie case for reopening. It depends on the nature of the case and the force of the evidence already appearing in the record sought to be reopened. Where that record is negative or contains adverse factors, a mere statement of conclusory allegations with respect to the statutory prerequisites is seldom enough. Where reopening for suspension purposes is sought, a mere showing that the alien has at last achieved the minimum statutory period of continuous physical presence does not ordinarily, without more, establish the other statutory prerequisites sufficiently to warrant reopening for a plenary hearing. On the other hand, we have on occasion overlooked the technical inadequacy of a motion to reopen where the new facts alleged, when coupled with the facts already of record, satisfy us that it would be worthwhile to develop the issues further at a plenary hearing on reopening."

They might create the--wrong--impression that we have the right to ignore the regulations which govern motions to reopen, and which are cited in footnote 1 of the Board opinion. We have no such right. The regulations have the force of law; and it is our duty to enforce them. Thus, "a mere statement of conclusory allegations with respect to the statutory prerequisites" for the relief sought is not "seldom enough;" it is never enough. The quoted dictum is in sharp conflict with the letter and

spirit of the clear provisions of the pertinent regulations. Section 3.8 of Title 8 of the Code of Federal Regulations expressly provides in subsection (a) as follows: "..... Motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material....." [Emphasis supplied.] Almost identical provisions govern motions to reopen directed to an officer of the Service and, in particular, in deportation proceedings to a special inquiry officer. 8 C.F.R. 103.5 and 8 C.F.R. 242.22.

Similarly, where "reopening for suspension purposes is sought, a mere showing that the alien has at last achieved the minimum statutory period of continuous physical presence does not" ever, "without more, establish the other statutory prerequisites sufficiently to warrant reopening for a plenary hearing." The use of the word "ordinarily" in the Board opinion appears to me to be quite misleading.

Finally, the following statement quoted from the Board opinion is far too broad and general, and is therefore not a correct exposition of what we can lawfully do: "On the other hand, we have on occasion overlooked the technical inadequacy of a motion to reopen where the new facts alleged, when coupled with the facts already of record, satisfy us that it would be worthwhile to develop the issues further at a plenary hearing on reopening."

Obviously, a motion to reopen will always be granted where a failure to reopen the proceedings might result in a gross miscarriage of justice. For example, in a matter involving an alien's application for withholding of deportation to a country in which he allegedly would be subject to persecution on account of race, religion, or political opinion, neither a special inquiry officer nor this Board would dream of denying a motion to reopen because of some "technical inadequacy" (as the Board opinion puts it). That, however, does not mean that we have the general authority to "overlook" clear violations of, or non-compliance with, the applicable laws and regulations of the United States.

MATTER OF LAM

In Deportation Proceedings

A-15639821

Decided by Board March 23, 1972

Apart from an alien's failure to establish prima facie the extreme hardship required to qualify for suspension of deportation, where, as in the instant case, he managed to stave off deportation and accrue the minimum statutory period of physical presence only by resort to dilatory procedures (including a petition for review denied for lack of prosecution), in the absence of compelling circumstances to counterbalance such an adverse factor denial of his motion to reopen to apply for suspension of deportation is warranted purely as a matter of discretion.

CHARGES:

Order: Act of 1952 - Section 241(a)(2) [8 U.S.C. 1251(a)(2)] -
Entered without inspection.

Lodged: Act of 1952 - Section 241(a)(1) [8 U.S.C. 1251(a)(1)] -
Excludable at time of entry - nonimmigrant, not in possession of valid nonimmigrant visa or border crossing identification card and not exempted from the possession thereof, as described in section 212(a)(26) [8 U.S.C. 1182(a)(26)].

ON BEHALF OF RESPONDENT:

Samuel D. Myers, Esquire
134 North La Salle Street, Suite 1616
Chicago, Illinois 60602

ON BEHALF OF SERVICE:

Olga M. Springer
Trial Attorney
(Brief filed)

In a decision dated April 10, 1968, a special inquiry officer found the respondent deportable on the charge in the Order to Show Cause and on the lodged

charge, granted him voluntary departure and ordered deportation if he should fail to depart. The Board dismissed his appeal on June 5, 1968. Respondent's motion to reopen to apply for adjustment of status under section 245 of the Immigration and Nationality Act was denied by the Board on July 23, 1968. A petition for review was filed in the United States Court of Appeals for the Seventh Circuit and was dismissed on January 30, 1969 for want of prosecution. On August 26, 1970, the Board denied the respondent's motion to reopen the deportation proceeding so that an application for suspension might be filed under section 244 (a)(1) of the Act.

Another petition for review was filed in the United States Court of Appeals for the Seventh Circuit, largely challenging the merits of the April 10, 1968 determination of deportability. In dismissing the petition for review on October 7, 1971, the court held that review of the merits of the April 10, 1968 order is barred by the lapse of time; and that the Board's action on August 26, 1970 denying the motion to reopen was discretionary. The court found no abuse of discretion. This matter is now before us again on motion to reopen to permit the respondent to apply for suspension of deportation. The present motion will be denied.

To be eligible for suspension of deportation under section 244(a)(1) of the Act, the respondent must establish: (1) physical presence in the United States for a continuous period of not less than seven years preceding the date of application; (2) good moral character during all such period; and (3) extreme hardship to the alien or other specified family members which would result from the alien's deportation. The regulations require that a motion to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material.

In support of the claim of hardship made in this motion, respondent submitted an affidavit which states a number of conclusions, none of which is supported by evidence or states the facts upon which it is based. The affidavit states that he would be unable to support himself in Hong Kong; that he would be unable to obtain a job; that he might starve to death; that he fears the communists in Hong Kong; and that he would become physically and emotionally ill if he had to leave the United States. All statements are conclusions, purely conjectural and not supported by any facts or evidence. In substance, what respondent alleges is tantamount to economic hardship if he is returned to Hong Kong. Economic detriment without more, however, is not enough to establish the hardship contemplated to qualify for the relief of suspension of deportation, Kasravi v. INS, 400 F.2d 675 (9 Cir. 1968); Kwang Shick Myung v. INS, 368 F.2d 330 (7 Cir. 1966).

Respondent contends that a denial of this motion would be a denial of due process, a prejudgment without a complete hearing depriving the respondent of a chance to be heard, and would make the respondent suffer from the possible omissions of prior counsel. These contentions ignore the sequence of events which have transpired since April 10, 1968, when he was found deportable and granted the privilege of voluntary departure. The evidence in the record establishes that the respondent has not been denied due process, that he has had ample opportunity to present his case before administrative and judicial tribunals, and that he has in fact taken advantage of these opportunities. The motion and affidavit presented do not state new facts which would establish, *prima facie*, the extreme hardship required to make respondent eligible for suspension of deportation under section 244(a)(1) of the Act. Respondent has not met the clear requirements for reopening set forth in the regulations. Reopening is not to be had

for the mere asking. Due process does not require reopening for a plenary hearing when a prima facie case of eligibility for the relief sought has not been established.

Moreover, quite apart from respondent's failure to make out a prima facie case, there is another compelling reason to deny the motion as a matter of discretion. Respondent entered without inspection on February 1, 1963. He has managed to eke out the minimum period of seven years' physical presence only by resorting to dilatory procedures. One flagrant example among many will suffice: On September 4, 1968, long before the seven-year period had accrued, he filed a petition for review under section 106(a) of the Act, challenging the deportation order then outstanding, Cheuk Jor Lam v. INS, 7 Cir., No. 17142. Pursuant to section 106(a)(3) of the Act, deportation was automatically stayed. He failed to prosecute the action, and on January 30, 1969 the court dismissed it for lack of prosecution.

Where, as here, an alien manages to stave off deportation and accrue the minimum statutory period of physical presence only by resort to such obviously dilatory tactics, in the absence of other compelling circumstances sufficient to counterbalance such an adverse factor we are warranted in denying a motion to reopen purely as a matter of discretion.

ORDER: It is ordered that the motion be and the same is hereby denied.

COPY RECEIVED

Robert B. Fisch

UNITED STATES ATTORNEY

2/3/76
Marian L. Bryant

BEST COPY AVAILABLE